UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/903,677	07/31/1997	CARL E. HANSON		2502

7590 01/08/2002

KARL G HANSON
3M OFFICE OF INTELLECTUAL PROPERTY
COUNSEL
P O BOX 33427
ST PAUL, MN 551333427

EXAMINER	
NGUYEN, DINH X	
ART UNIT	**PAPER NUMBER**
3738	

DATE MAILED: 01/08/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	Applicant(s)
08/903,677	Hanson
Examiner	**Art Unit**
Dinh X. Nguyen	3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *Oct 30, 2001*.

2a) ☒ This action is **FINAL.** 2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1-17* is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1-17* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☐ All b) ☐ Some* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) ☐ Notice of References Cited (PTO-892)
16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
18) ☐ Interview Summary (PTO-413) Paper No(s). _____
19) ☐ Notice of Informal Patent Application (PTO-152)
20) ☐ Other:

DETAILED ACTION

Applicant's filing of a CPA dated October 30, 2001 is acknowledged. The response does not include any changes to the specification nor any amendment to the claims. The 112 rejections and art rejections made in the previous office action is hereby maintained and reiterated below for convenience. Examiner's response to Applicant's arguments against the rejections are made further below.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-17 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

As to the specification, Applicant has given no proof that the method as claimed would prevent "chest pain". Even though Applicant may attest that Applicant has received "beneficial effects" from drinking a large quantity of lime juice, this is not evidence in a scientific qualitative sense that ingesting a large quantity of lime juice or vitamin C would prevent any medically defined ailments. As noted in the top of page 1 of the specification, "symptoms [of chest pains] are most often induced by some physical or emotional stress ...". Any psychological effects from drinking lime juice, without physical proof of relief from ailments, will not be considered to be

operative in a medically accepted and patentable method of treating a disease or the like. In fact, it is well known that "placebo effects" are common in individuals who believe that certain "medication" have alleviated their medical ailments, while in reality such "medication" were inactive and while in reality, placebos given to them instead. Applicant's condition as described in the specification, may be due to the wide belief that vitamin C, and related sources such as orange juice, are good for the body. In fact, it has been shown that excessive vitamin C may damage the body to a certain extent.

Lastly, Applicant has not shown proof of what is considered the "active ingredients" as briefly discussed at the bottom of page 3 of Applicant's specification, or the "effective amount" as claimed in the claim language. Absent a showing of scientifically and reliable proof that the claimed method works as to the treatment of "chest pains", the present disclosure by Applicant is considered non-operative and non-enablement.

Claims 1-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. See the above paragraphs for details. Additionally, the following applies to individual claims.

As to claim 1, at line 4, it is not clear what "effective amount" consists of for the treatment as claimed.

As to claims 15 and 16, it is not clear what the "active ingredients" are for the treatment as claimed.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-7 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Singh et al., Langtry et al., Riemersma et al., or Dapcich-Miura et al. Applicant has merely claimed a method of treating "chest pain" by taking lime juice. The above references all disclose a method of treating angina (medical terminology for a particular type of "chest pain") or related "chest pain" by taking vitamins, i.e., vitamin C, or fruit juices. Since Applicant has not shown the particular advantages over taking lime juice over other juices which contain vitamin C, and related vitamins and chemical composition, the use of lime

juice is equated with the use of other citrus juices. Further, Applicant has not shown what is considered the "effective" substance and "effective" dosages of the juice in treating chest pain, the differences in dosage is treated as a "design choice" similar in the way a person increase or decrease medical dosages depending on the severity of the medical condition. Therefore, although the above cited references do not disclose the exact dosage of juice to take, it is inherent that the "effective" dosage or the dosage as claimed by Applicant is disclosed. In the alternative, it would have been obvious to one of ordinary skill in the art to have altered the dosage to be as such claimed by Applicant, because this is a mere "design choice" depending on the severity of the medical condition.

Response to Applicant's Arguments

Starting at page 2 of Applicant's response, arguments were made regarding the non-enablement rejection made in the previous office action. Those arguments are not deemed persuasive in overcoming the rejection.

It was argued that numerous experiments were performed by Applicant regarding the effect of lime juice as to chest pain. However, no data has been provided by Applicant to show that Applicant's experiments conform to standard scientific experiments providing at least some proof of sustain effects of presentable treatments for chest pains. Examiner maintain that the effects of lime juice as an active treatment to chest pain, based on the information provided by Applicant is tenuous at the very least. Applicant has shown no proof of the placebo effect as stated in the previous office action, in conjunction to Applicant's specification describing

"beneficial effects" from drinking "a large quantity" or "an effective amount" of lime juice for "chest pain".

The case law provided in Applicant's response as to overcome the 112 rejection regarding "an effective amount" is not persuasive in overcoming the rejection. The case law as stated is distinguished from the facts of this case in such that any "effective amount" referred to in that case is in relation to a known and quantifiable amount of medication. Known medicine in quantifiable amount, based on capsules and pills, even though they are referred to in a medical method as "an effective amount" is different from Applicant's mere recitation of "an effective amount" of lime juice for treatment of "chest pain".

As to Applicant's arguments regarding the treatment for "chest pain", starting at the bottom of page 3 of Applicant's response, these arguments are also not persuasive in overcoming the rejections. It was argued that the prior art does not disclose the treatment for "chest pain". It is clear that the prior art's treatment for myocardial infarction or angina fall within the realm of the broad terminology of "chest pain".

The prior art as applied is replete with information as to using the vitamins commonly found in different juices in their disclosed treatment regimen. The prior disclosure include using grapefruit juices, orange juices, and lemon juices. Absent a showing of criticality, as indicated in the previous office action, there is considered to be no differences in treatment using lime juice from that of using lemon juice, etc. Applicant's effort in the written response opposing the

rejections made in the previous office action is commendable. However, the rejections are maintained for the above reasons.

Conclusion

All claims are drawn to the same invention claimed in the parent application prior to the filing of this Continued Prosecution Application under 37 CFR 1.53(d) and could have been finally rejected on the grounds and art of record in the next Office action. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing under 37 CFR 1.53(d). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dinh Nguyen whose telephone number is (703) 305-3522.

DINH X. NGUYEN
PRIMARY EXAMINER

dxn

January 4, 2002

Attachment for PTO-948 (Rev. 03/01, or earlier)
6/18/01

The below text replaces the pre-printed text under the heading, "Information on How to Effect Drawing Changes," on the back of the PTO-948 (Rev. 03/01, or earlier) form.

INFORMATION ON HOW TO EFFECT DRAWING CHANGES

1. Correction of Informalities -- 37 CFR 1.85

New corrected drawings must be filed with the changes incorporated therein. Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin. If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the Notice of Allowability. Extensions of time may NOT be obtained under the provisions of 37 CFR 1.136(a) or (b) for filing the corrected drawings after the mailing of a Notice of Allowability. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

2. Corrections other than Informalities Noted by Draftsperson on form PTO-948.

All changes to the drawings, other than informalities noted by the Draftsperson, **MUST** be made in the same manner as above except that, normally, a highlighted (preferably red ink) sketch of the changes to be incorporated into the new drawings **MUST** be approved by the examiner before the application will be allowed. No changes will be permitted to be made, other than correction of informalities, unless the examiner has approved the proposed changes.

Timing of Corrections

Applicant is required to submit the drawing corrections <u>within the time period set in the attached Office communication</u>. See 37 CFR 1.85(a).

Failure to take corrective action within the set period will result in **ABANDONMENT** of the application.